

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? : NO  
No

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BHARUCH DIST. CENTRAL CO. OPERATIVE BANK LTD.

Versus

BHARUCH DIST. CO.OP. BANK STAFF UNION  
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Appearance:

MR BS PATEL for Petitioners  
MR TR MISHRA for Respondent No. 1  
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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision:07/07/2000

C A V JUDGEMENT

The present petition has been filed by the  
Bharuch District Central Co Operative Bank Limited, the  
Chairman and the Manager of the said Bank as petitioners

against the Bank Staff Union - the Respondent. The petitioner Bank is registered under Gujarat Co-Operative Societies Act, 1961, and the petitioner Bank is covered under the provisions of Bombay Industrial Relation Act 1946. Apart from the rules & regulations and bye-laws of the Bank, Certified Standing Orders (Annexure-C) are also applicable to the Bank. The petitioner No.3 is the Manager of the Bank. A settlement has been arrived at between the petitioner Bank and the respondent Union on 26-6-1997 and the same has been annexed as Annexure-D. According to the Bank the conditions of settlement applies to the respondent Bank and not in respect of the Manager, as the Manager is not covered within the definition of "Employee". Petitioner No.3 retired from the post of Manager on 16-3-98. The Board of Directors of the Bank by passing a resolution extended services of petitioner No.3 for a period of one year. Subsequently further extension was given for one more year. Thereafter the Board of Directors passed another resolution extending the term of petitioner no.3 for a further period of one year. Accordingly three extensions have been granted, and now the petitioner No.3 is entitled to continue as Manager up to 16-3-2000. The respondent union objected against third extension given by the Board of Directors to petitioner No.3. The main grievance against respondent was that, under the compromise at Annexure-D petitioner is not entitled to give extension for a period exceeding two years. The respondent Bank approached the Labour Court, Bharuch by filing application under Bombay Industrial Relations Act which has been registered as Application No. 1/2000. In the said application, the union challenged the extension given to the petitioner No.3 for the third year. Accordingly the union prayed before the Labour Court to quash and set aside the extension given to the petitioner no.3. The petitioner also contested the application before the Labour Court. The Labour Court after hearing counsel of both the sides, and after going through the documents dismissed the prayer for the interim order by order dated 14-2-2000. Having felt aggrieved by the order of the Labour Court, Bharuch the respondent union preferred Revision Application No. 1/2000 before the Industrial Court at Vadodara. Petitioner Bank also filed Revision Application No. 2/2000 before the said Court, having felt aggrieved by certain observations made by the Industrial Court while passing the interim order. The Industrial Tribunal, Vadodara after hearing the parties allowed the revision application filed by the union and dismissed the revision application filed by the petitioner Bank by order dated, 2-3-2000 holding that the petitioner Bank has done illegal changes by giving third

year extension to the petitioner No.3 and directing the Bank not to allow the petitioner No.3 Manager to continue with his service. Having felt aggrieved by the aforesaid order of the Industrial Tribunal No.2, Vadodara, the Bank and its Chairman and Manager as petitioners have filed the present writ petition for quashing the order dated 2-3-2000, and also to quash the observations made by the Labour Court in its order dated 14-2-2000.

2. I have heard learned counsel Mr. B.S. Patel appearing on behalf of the petitioners and learned counsel Mr. T.R. Mishra for respondent Bank Staff Union. Mr. Patel appearing on behalf of the petitioners submitted that the Industrial Tribunal passed the order ignoring the provisions of the Certified Standing Order. It is submitted by Mr. Patel that sub section (13) of Section 3 of Bombay Industrial Relation Act, 1946, the phraseology "Employee" is defined and according to provisions of Section 3 (13) (b) (ii) the word "Manager" has been excluded from the definition of employee. It is submitted that the Labour Court can decide the dispute between the employer and workman and not in respect of a dispute between workman and manager. Therefore the order passed by the Industrial Tribunal is without jurisdiction. Mr. Patel further submitted that the Certified Standing Order clearly provides that, employees and officers of the Bank shall retire on attaining age of 58 years, but the Board of Directors may extend the services of any staff or officer of the Bank for a period of three years, but not extending more than one year at a time. Learned counsel Mr. Patel accordingly submitted that, the Board of Directors by resolution has taken the decision to extend the services of petitioner No.3 on the post of Manager for third year and there is no illegality in giving such extension and which is permissible under the provision of Certified Standing Order.

3. It is further submitted by learned counsel Mr. Patel appearing on behalf of the petitioners that, while granting the interim relief to the respondent union the Industrial Tribunal has relied upon the settlement arrived at between the union and the Bank. The settlement dated 26-6-1997 Annexure-D provides that after retirement extension can be given for three years, but not extending one year at a time. Learned counsel Mr. Patel for the petitioners submitted that the settlement dated 26-6-1997 is not applicable in a case of manager who has been excluded by the definition in section 3 of the Bombay Industrial Regulation Act 1946. It is accordingly submitted that, in the case of manager the conditions of service will be governed by the Certified

Standing Orders. It is also submitted by Mr. Patel that the extension in service is not granted by the Bank on the personal interest of any officer or staff but it is according to the convenience and requirement of the Bank such extension in services are given. Learned counsel submitted that the Board of Directors considered that the extension of third year to the petitioner No. 3 will be in the interest of the Bank and for smooth functioning of its office, therefore the union cannot have any say when such discretion is exercised by the Board of Directors.

4. Learned counsel Mr. Patel further submitted that, in the main application the union has sought for quashing the extension order given to petitioner No.3 by petitioner No.1 Bank. In the interim order the Industrial Tribunal has directed the Bank not to allow the petitioner No.3 to continue as Manager of the Bank. Learned counsel accordingly submitted that by interim order the Industrial Tribunal has given full fledged relief to the respondent union and no other issues survives which requires any decision either by the Labour Court or by the Industrial Tribunal. Learned counsel Mr. Patel accordingly submitted that the Apex Court had repeatedly held that the practice of granting interim orders which practically gives full scale relief sought in the petition for not better than a prima facie case made out without being concerned about the balance of convenience, the public interest and a host of other considerations. Mr. Patel submitted that the petitioner No.3 is discharging an important function in the Bank and he is responsible for smooth functioning of day to day work of the Bank. It is also submitted that if the manager is discontinued as per the order of the Tribunal, the Bank will face serious difficulties in running its day to day banking business. Mr. Patel also submitted that the post of Manager can be filled up either by way of promotion or by direct appointment. It is also submitted that, in case of promotion it is a selection post and therefore unless a suitable person is available for being promoted to the post of manager, the Bank will have to go for direct recruitment and that may take certain time. It is also submitted by Mr. Patel that, having regard to the efficiency and competency of petitioner No.3 and also having regard to the fact that some time may be necessary for filling up the post of manager, the Board of Directors considered it fit and expedient to extend the term of the petitioner No.3 Manager for third year. Learned counsel accordingly submitted that the Industrial Tribunal did not consider all these aspects before granting final relief in its interim order dated 2-3-2000.

5. Mr. Mishra, learned counsel appearing on behalf of the respondent union submitted that the Industrial Tribunal has exercised its jurisdiction in granting the interim relief and such discretion exercised by the Tribunal should not be interfered with in a petition under Article 226 and 227 of the Constitution. Mr. Mishra further submitted that the Tribunal has passed the order after hearing both the parties and after perusing the documents and came to the conclusion that the extension of petitioner No.3 beyond the period of two years is against the provisions of settlement arrived at between the union and the Bank on 26-6-1997. Mr. Mishra further submitted that the provisions of Standing Order shall not apply in case of settlement arrived at between the union and the Bank and therefore such settlement will prevail over the Standing Order. It is submitted by Mr. Mishra that in the settlement it has been clearly provided that the extension beyond two years cannot be made to an employee of the Bank. Learned counsel accordingly submitted that the Tribunal has not committed any error or illegality in discontinuing the service of the petitioner No.3 manager by the interim order.

6. Learned counsel Mr. Mishra further argued that because of the provisions of Section 3 of the Bombay Industrial Relations Act, the manager cannot be excluded from the definition of 'Employee'. Learned counsel contended that the petitioner No.3 is working as a manager by designation alone and it cannot be said that he is performing supervisory or administrative functions. Learned counsel draws my attention to Annexure-D which is in respect of duties and functions of different categories of officers and staff of the Bank. Learned counsel submitted that the functions of the manager is to keep the record of meetings of the Board of Directors and to see the day to day functions of the Bank. Learned counsel accordingly submitted that the manager is virtually functioning as a superior clerk of the Bank and he cannot be termed as a 'Manager' as he has not been given the disciplinary control over the staff of the Bank. Mr. Mishra has also contended that, having regard to the functions of the manager as specified in the bye laws of the Bank it cannot be said that the petitioner No. 3 is discharging any managerial, administrative or supervisory functions. Therefore it is further submitted that the Tribunal has taken a correct decision in discontinuing the manager from his post with immediate effect.

7. I have considered the submissions of learned

counsel of both the parties. It appears that, in the main application before the Labour Court the union claimed relief to set aside the third year extension order of the petitioner No.3 - Manager of the Bank. In the interim relief application also the union claimed to direct the Bank not to allow the petitioner No.3 as manager in the Bank beyond two years extension period. The Labour Court initially rejected the interim prayer of the union and did not interfere with the extension order issued by the Bank in favour of petitioner No.3 manager. However the Industrial Tribunal in the revision application filed by the union directed by its order dated 2-3-2000 not to allow the petitioner No.3 manager to continue in service. The Tribunal further ordered that the respondent No.1 and 2 Bank has done illegal change by giving third year extension to the manager. Thus it is evident that the Industrial Tribunal has allowed the principal relief in favour of respondent union of their interim application which they have sought in the main petition. This practice have been deprecated by the Apex Court. While passing the interim order the Court or Tribunal should not only see prima facie case but also should consider about balance of convenience, the public interest and host of other considerations. In the present case if the manager is removed by refusing third year extension, the Bank will be in a difficult position to run its day to day administration and the public at large will suffer. The Tribunal also not considered that for appointment of manger the Bank requires time either to promote a suitable person to the post of Manager or to go for new recruitment. As regards the prima facie case the Tribunal should have considered the rival contentions of the parties. It appears from the Standing Order (Annexure-C) issued under section 35 (2) of the Bombay Industrial Relation Act 1946 that the word " Employee " and "Manager" has been separately defined. Section 3 of the Bombay Industrial Regulation Act also excludes the Manager from the definition of Employee. The contention of learned counsel Mr. Mishra that to ascertain whether a person is in fact discharging the duties of a manager is required to be seen from the functions he discharges. That is a question of fact which is required to be decided after taking evidence from both the sides. But prima facie it appears that the post of manager is not included within the definition of employee in a Bank. From the Standing Orders (Annexure-C) Service conditions of The Broach District Central Co Operative Bank Ltd, it appears that the manager is also empowered to impose minor punishment on Class-III and IV employees of the Bank. Therefore it is evident that the manager is also discharging disciplinary

control over Class- III and IV staff. Having regard to all these facts & circumstances of the case, I am of the view that the Industrial Tribunal, Vadodara has committed an illegality and acted without jurisdiction in granting the interim relief to the respondent union, and directing the Bank not to continue the petitioner No.3 the Manager in service. Consequently the order of the Industrial Tribunal, No. 2, Vadodara passed on 2-3-2000 in Revision Application No. 1/2000 filed by the respondent Union is liable to be quashed and accordingly the interim order passed by the Industrial Tribunal on 2-3-2000 is hereby quashed. The Labour Court, Bharuch is directed to decide the main application of the union in accordance with law. The Labour Court, Bharuch, while deciding the main application shall not be influenced by any of the observations made by this Court or by the observations made by it in its order dated 14-2-2000, or by the observations made by the Industrial Tribunal, Vadodara dated 2-3-2000.

8. With the aforesaid observations and directions, present petition is allowed. Rule made absolute. However, I make no order as to costs.

Dt: -07-2000

( P.K. Sarkar, J )

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